

The inquiry no one wants to chair

Catarina Sjölin considers the format the home secretary's inquiry into historical child abuse should take in order to truly find answers

Chairs have come and gone before the home secretary's inquiry into child abuse has even begun its work. The number of people willing to take on the position of chair must now be vanishingly small. The potential remit of the inquiry is massive, the terms of reference are still undecided and the expectations from some victims, and perhaps the public, are huge.

Statutory inquiry

Although the inquiry was announced on 7 July 2014, it has so far done nothing. Groups representing some victims of abuse have been vocal in their condemnation of both Dame Elizabeth Butler-Sloss and Fiona Woolf as chairs. There are now calls for the inquiry to be held under the Inquiries Act 2005 because of the greater powers this would give to compel disclosure of documents and attendance of witnesses.

However, a bigger, statutory inquiry is not necessarily a good idea. Even inquiries with a very clear focus have taken a long time and cost huge amounts: the Bloody Sunday inquiry, for example, took 12 years and cost nearly £200 million. The scope of the proposed inquiry is much wider. There have been numerous smaller scale, focused investigations into the (in)actions of the Church of England, the BBC, the institutions of Rotherham etc; the proposed inquiry is different in that it will not be limited to particular incidents or institutions.

But it is not just the width of the inquiry's remit which it is important to understand, but also the level. It is not just about investigation: this inquiry should not take the place of police investigations and prosecution of offenders, or of civil actions against abusers and their employers. What the home secretary announced back in July was an examination of public and non-state bodies and how they have responded to their duty to protect children from sexual abuse. This means consideration well beyond particular incidents: it is the "how" and "why" rather than the "what" and "when".

Inquiry format

So we need to think beyond the narrow statutory inquiry format. Hillsborough is being investigated by an independent panel which is reviewing documentation. The internal investigation conducted by Peter Wanless, the chief executive of the NSPCC, into the role of the Home Office in handling sexual abuse allegations between 1979 and 1999 - which was announced at the same time as the main inquiry - has already reported back to the home secretary. Jersey has set up the Independent Jersey Care Inquiry, which is now successfully up and running. These inquiries all appear to have worked because they are an appropriate way to deal with what they are investigating.

What would be appropriate for the kind of broad inquiry the home secretary is contemplating? Perhaps we need to look overseas for a reminder of how to do it - Australia has recently embarked upon a royal commission on almost exactly

this topic. The structure of a royal commission is rather more suited to this type of investigation, which must involve consideration of the whole area as well as selection of specific examples upon which to take specific evidence. For the overview, it is vital to understand the context, both in the law and in society, in which things happened.

Legal and social context

Understanding how society viewed child abusers and their victims will be necessary before the inquiry can proceed. The law on sexual offending prior to the Sexual Offences Act 2003 - both in theory and in practice - was nothing like as condemnatory of sexual offending against children as it is now. Defendants were excused and victims were routinely blamed or written off. It was only at around the same time as the 2003 Act that the courts accepted that employers were vicariously liable for their abusive employees.

The law was not standing in isolation during this period; it reflected the attitudes of society and that difficult truth will need to be faced. That is not say that everything is now perfect: the investigation into sexual abuse in Rotherham showed that some people and institutions have changed only by paying lip service to child protection. That is one reason why we need an inquiry rather than a truth and reconciliation commission: we need, as a society, to see what we have accepted in the past before we can protect our children in the future.

The role of chairing this inquiry is not becoming any more attractive, but it certainly becomes ever more important.

Catarina Sjölin is a senior lecturer at Nottingham Law School and door tenant at 36 Bedford Row. She is the co-author of *The Sexual Offences Handbook on the current and historic law on sexual offending*